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EXAMINER

THOMPSON, H

ART UNIT

PAPER NUMBER

3634

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/345,621

Applicant(s)
Kimener, Tom

Examiner
Hugh B. Thompson

Group Art Unit
3634



☒ Responsive to communication(s) filed on Jun 7, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-14 and 17-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 19 is/are allowed.

☒ Claim(s) 1-14, 17, 18, and 20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3634

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-13, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris #4,422,264 in view of Desrosiers #5,701,701. Harris, as best seen in Figures 2 and 3, discloses a barrier assembly 10 comprised of rectangular welded gate segments 20, 22, U-shaped guide rails 24, 26, 46, gate segment rollers 21, stops 50, 51, with the bottom edges of the guide rails also serving as stops to limit movement of the gate segments within the guide rails, and overhead supports 34, 36, 38, 40, 44, having a cable 32 serving as a connection between the gate segments and the overhead supports which facilitates raising and lowering of the segments.

3. Harris fails to disclose rigid crossbars pivotally connected to both gate segments, a spring mounted between an overhead support and the crossbars, a segmented cross bar having pivot connections therein, rollers extending from the segmented crossbar sections, and a contact plate in front of the guide rails.

4. Desrosiers teaches the utility of a barrier assembly 10 comprised of rigid crossbars 20, 22, which are pivotally connected to gate segments 16, 18. Rigid pivoting crossbars allow for

Art Unit: 3634

predetermined spacing between gate segments and further permits each segment to be in an open and closed position relative to the other segment as the segments are raised or lowered.

Therefore, to one of ordinary skill in the art, it would have been obvious to provide the barrier assembly of Harris with rigid pivoting crossbars as taught by Desrosiers so as to allow for predetermined spacing between gate segments and to further permit each segment to be in an open and closed position relative to the other segment, as the segments are raised or lowered.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Desrosiers as applied to claims 1, 3-13, 18, and 20 above, and further in view of Walling #2,226,033. Walling, as disclosed in column 3, lines 50-75, teaches the utility of springs 24, 24', 25, 25', 28, 28', 29, 29' which are attached to pivoting bars 18, 19, this arrangement facilitating the opening and closing movements of door segments 14-17 as well as providing a means for reducing the amount of force needed to raise and lower the door segments. Therefore, to one of ordinary skill in the art it would have been obvious, as a matter of engineering design choice, to provide the assembly of Harris in view of Desrosiers as set forth above, with a spring arrangement as taught by Walling which facilitates the opening and closing movements of door/gate segments and provides a means for reducing the amount of force needed to raise and lower the door/gate segments.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Desrosiers as applied to claims 1, 3-13, 18, and 20 above, and further in view of Young #3,378,059. Young teaches the utility of segmented pivoting crossbars 22, 23, which are pivotally

Art Unit: 3634

connected to door segments 10, 12, 14, have rollers 20 at their pivot joints, the rollers being received in guide rails 40, 42, a front surface of rail 40 serving as a contact plate. See Figure 5. The segmented crossbars allow for concurrent movement between door/gate segments and the rollers permit controlled movement of the cross bars relative to the guide rails. Therefore, to one of ordinary skill in the art, it would have been obvious to provide the assembly of Harris in view of Desrosiers as set forth above, with a segmented pivoting crossbar as taught by Young so as to allow for concurrent movement between door/gate segments and the rollers permit controlled movement of the cross bars relative to the guide rails.

Allowable Subject Matter

7. Claim 19 is allowed. The primary reason for allowance is the inclusion of segmented cross bar pivotally coupled between first and second gate segments, the segmented cross bar including a plurality of substantially rigid crossbars pivotally coupled together in series, each pivotal coupling including a roller that is received in a guide rail. See lines 14-17. The prior art of record fails to teach or suggest the claimed features absent the applicant's own disclosure.

Response to Arguments

8. Applicant's arguments filed in the Amendment of June 7, 2000 have been fully considered but they are not persuasive. At the outset, it should be noted that the omission of claim 18 from the Section 103 rejection of the Office Action of March 7, 2000 was a typographical omission.

Art Unit: 3634

Specifically, the cross bar as defined in claim 18, lines 17-25, was defined in operation, in paragraph 8 of the Office Action of March 7, 2000. Therefore the claimed subject matter of claim 18 was fully addressed in the prior Office Action.

9. With respect to the arguments beginning on page 7 of the Amendment relating to the positioning of the gate sections during operation, Harris clearly discloses, as best seen in Figure 3, a gate section 20 in a vertical orientation within the vertical guide rails and a gate section 22 in a substantially horizontal orientation. It is evident that as one gate section is lowered, another is raised. In addition, the support post of Desrosiers is not precluded by any claim language, nor is it deemed essential to the *teaching* of a rigid cross bar connecting opposing gate sections. The applicant's argument with respect to claim 19 is noted.

10. Finally, it should be noted that the test for obviousness is what the combined *teachings* and not necessarily the bodily incorporations of the references would have suggested to those of ordinary skill in the art. *See In re Keller*, 642 F. 2d 413, 208 USPQ 871 (CCPA 1981).

Moreover, in evaluating such references and establishing motivation to use them, it is proper to take into account not only the specific teachings of the references, but also the inferences which one skilled in the art would reasonably be expected to draw therefrom (*see In re Preda*, 401 F.2d 825, 159 USPQ 342 (CCPA 1968)) and skill, rather than the converse, is presumed on the part of those of ordinary skill in the art (*see In re Sovish*, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985)).

Art Unit: 3634

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Hugh B. Thompson whose telephone number is (703) 305-0102. The examiner can normally be reached on Monday thru Friday from 8:30 am to 5:00 pm.

Art Unit: 3634

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Hugh B. Thompson

August 24, 2000



Daniel P. Stodola
Supervisory Patent Examiner
Group 3600